IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7001 OF 2002

Shri Anand Ghan Sahakari Grah
Rachana Sanstha Maryadit — Petitioner

versus

Vijaykumar Motichand Shah — Respondent

WITH
WRIT PETITION NO.7002 OF 2002

Shri Anand Ghan Sahakari Grah
Rachana Sanstha Maryadit — Petitioner

versus

Pravin Digamber Vadgaonkar
and others — Respondents

WITH
WRIT PETITION NO.7004 OF 2002

Shri Anand Ghan Sahakari Grah
Rachana Sanstha Maryadit — Petitioner

VERSUS

J.G.Khude and others — Respondents

WITH
WRIT PETITION NO.7006 OF 2002

Shri Anand Ghan Sahakari Grah
Rachana Sanstha Maryadit — Petitioner

VERSUS

Mohan Mahadeo Deshpande & ors. — Respondentse

WITH
WRIT PETITION NO.7009 OF 2002

Shri Anand Ghan Sahakari Grah
Rachana Sanstha Maryadit Petitioner

versus

Jayprakash Nemchand Shah & ors. Respondents

WITH
WRIT PETITION NO.7010 OF 2002

Shri Anand Ghan Sahakari Grah
Rachana Sanstha Maryadit Petitioner

versus

Prakash Ganpatrao Achalare Respondent

WITH
WRIT PETITION NO.7011 OF 2002

Shri Anand Ghan Sahakari Grah
Rachana Sanstha Maryadit Petitioner

versus

Dattatraya Govind Walimbe & ors. Respondents

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th December 2004

PC :

1. Petitioner is a co-operative society. Writ petitions are filed challenging orders passed by the Minister of State, Department of Co-operation, Government of Maharashtra refusing to interfere with the order passed by the Joint

Registrar of Co-operative Societies (Appeals), Pune Division, Pune, dated 25th January 1999. The Joint Registrar has passed a common order in the appeals which is to the following effect :-

"ORDER

1. Appeal Nos.95, 97, 99, 100 to 104, 108, 109 and 145/97 are partly allowed.

2. The orders of Authorised Officer Respondent No.1 herein dtd.21.7.97 passed under section of M.C.S. Act, 1960 are set aside. Matters are remanded back to Assistant Registrar for conducting fresh enquiry, starting from framing of charges, as provided under rule 72(3) of M.C.S.Rules 1961. The Assistant Registrar or Authorised Officer, after following due procedure of law may pass appropriate orders.

3. No orders as to cost.

Given under my hand and seal on this 25th day of January, 1999."

2. The petitioner society through its secretary challenged this order and the revisional authority i.e. minister concerned has rejected the revision application and confirmed the order of Divisional Joint Registrar. He has also raised attachment levied by the Recovery Officer, Maharashtra State Co-operative Housing Finance Corporation Ltd. insofar as properties of respondents 2, 6, 8, 15, 19 and 20 before me. Properties which were under attachment have been

directed to be released and handed over to the concerned respondents.

3. Mr.Anturkar, learned advocate for petitioner did not seriously challenge the orders of the appellate as well as revisional authority finding fault with the procedure adopted by the authorised officer while exercising powers u/s. 88 R/W Rule 72 of Maharashtra Co-operative Societies Act (hereinafter referred to as "MCS Act" for the sake of brevity) and Rules. However, he submits that the transactions in question have been entered into as early as 1979-1980 and the proceedings which have commenced are not yet finally concluded. He complains that the order of revisional authority dated 7th September 2002 remanding the matter back to the Assistant Registrar would entail further delay and in all probability the inquiry will never be concluded. He complains that more than 25 years have lapsed and yet the proceedings have not completed. This frustrates and defeats the mandate of Section 83 and 88 of the MCS Act.

4. The contesting respondents submitted that once the conclusion of appellate and revisional authority is not liable to be interfered with,

then it is for the authorities to consider as to how and in what manner the inquiry should be proceeded with.

5. After hearing learned counsel appearing for both sides, in my view, the findings recorded by the revisional authority insofar as initiation of proceedings u/s 88 cannot be interfered with in my jurisdiction which is limited. These findings are recorded after adverting to the materials as also by noticing the relevant statutory provisions. It is well settled that if the power has to be exercised in a manner stipulated by the statute, then it should be exercised in that manner alone. I need not advert in details about the manner in which the inquiry u/s 83 and 88 has to be conducted. The procedure is elaborately set out in the Act and Rules. Therefore, no fault can be found with the directions which have been issued by the Joint Registrar. Consequently, the complaint of petitioner on that account is without any substance.

6. However, there is much substance in the complaint of Mr.Anturkar that the matter is being delayed. The very purpose of initiation of inquiries of this nature is to punish the persons

who are mis-managing the affairs of co-operative societies. Ultimately, liabilities have to be fixed and monies as well as properties recovered from persons who are in-charge of management. Therefore, the direction of revisional as well as appellate authority issued in the facts and circumstances of this case needs to be complied with expeditiously. The Assistant Registrar concerned to conduct a fresh inquiry in accordance with the direction reproduced above as expeditiously as possible and conclude the same within a period of six months from today.

7. The request of Mr.Anturkar to continue either the attachment or direct the authorities to maintain status-quo cannot be considered by me. It will be open for the petitioner to make appropriate application invoking the powers to levy attachment conferred upon the authorities under the Rules and if such an application is made, the authorities shall consider the same on its own merits and in accordance with law after giving full opportunity to the affected parties. However, considering the seriousness of the draft charges the premises which are presently in possession of respondents 2, 6, 8, 15, 19 and 20 before the Minister in the revisional proceedings

should not be alienated. This direction shall not in any manner preclude the petitioner from making an application for attaching the properties. Equally, this direction is without prejudice to the rights and contentions of these respondents and all affected parties.

8. It is expressly clarified that this Court has not gone into the merits of charges and all contentions of parties in that behalf are expressly kept open.

9. Learned AGP Mr.Solkar appearing for respondent authorities to intimate this order to them for compliance.

(S.C.DHARMADHIKARI, J.)